

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.17568 OF 2024

M/s. Maharashtra Agencies & Ors.

....Petitioners

V/S

Nagji Palan Sawala & Ors.

....Respondents

Mr. S.C. Wakankar *for the Petitioners.*

Mr. Shreyash Yande a/w Mr. Saurabh Thakkar, Mr. Akshay
Rabade *for Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.
DATE : 03 DECEMBER 2024.

P.C.:

1. The Petition challenges order dated 21 October 2024 passed by District Judge-14, Pune, on Application at Exhibit-4 by which while granting stay to the execution of the eviction decree dated 5 September 2022 the Appellate Court has directed the Petitioners to pay an amount of Rs.50,000/- per month on or before 5th day of each month till further order in addition to payment of decretal amount of Rs.4,00,000/-.

2. I have heard Mr. Wakankar, the learned counsel appearing for Petitioners and Mr. Yande, the learned counsel appearing for Respondent No.1/original Plaintiff.

3. It appears that the suit was instituted for eviction of the Petitioners/Defendants describing them to be gratuitous licensees. The Suit has been decreed on 5 September 2022 directing Petitioners/Defendants to handover possession of the suit premises to the Plaintiffs with further direction to pay compensation of Rs.4,00,000/-. In Appeal filed before the Appellate Court, Petitioners/Defendants prayed for stay to the execution of the decree dated 5 September 2022. Since Petitioners/Defendants are seeking stay to the execution of the eviction decree under provisions of Order 41, Rule 5 of the Code of the Civil Procedure, 1908 (**the Code**), the principles enunciated by the Apex Court in its judgment in **M/s. Atma Ram Properties (P) Ltd. vs. M/s. Federal Motors Pvt. Ltd. , 2004 SC 597 : (2005) 1 SCC 705** would apply to the present case. In that view of the matter, I do not see any error on the part of the learned Appellate Court is putting the Petitioners/Defendants to terms by fixing interim compensation in respect of the suit premises during pendency of the Appeal.

4. Mr. Wakankar would submit that in a case involving the gratuitous licensee, since there is no agreed amount of rent, it would be impermissible for the Appellate Court to direct payment/deposit of interim compensation as a pre-condition for grant of stay under Order 41, Rule 5 of the Code. I am unable to agree. Though the judgment of Apex Court in **M/s. Atma Ram Properties (P) Ltd.** (supra) essentially relate to a protected

tenant under the Rent Control Act, I am of the view that a gratuitous licensee does not stand on a better footing than a protected tenant. A protected tenant, who is otherwise liable to pay only standard rent during pendency of the suit, is also be made to deposit interim compensation representing market rent of the premises during pendency of Appeal by the Appellate Court. The case of a gratuitous licensee, who does not have a right to remain in possession of the premises, cannot in fact be equated with the case of a protected tenant. In fact possession of a protected tenant becomes unlawful only upon passing of a decree for eviction, whereas in case of a gratuitous license the same becomes unlawful from the date of termination of license. I therefore do not see any reason why the Appellate Court cannot direct deposit of interim compensation by following principles enunciated by Apex Court in its judgment in **M/s. Atma Ram Properties (P) Ltd.** (supra) even in case of a gratuitous licensee.

5. Mr. Wakankar would rely upon judgment of this Court in ***Radheshyam vs. Tuljaprasad***, 2007 AIR (Bom) 83, which in my view, has no application to the present case as the issue decided by this Court in the said judgment is with regard to liability to pay/deposit arrears of rent/licensee fees during pendency of the suit under provisions of Order 15A of the Code and effect of such non-deposit resulting in striking off defence of the Defendant.

6. So far as the quantum of interim compensation is concerned, the Appellate Court has fixed the same at Rs.50,000/- per month. It appears that Petitioners/Defendants occupy a shop situated on ground-floor of the building admeasuring 35.92 square meters and a mezzanine floor admeasuring 17.76 square meters in a prominent location in Pune City. The Petitioners/Defendants did not produce any valuation report in respect of the suit premises either before the Appellate Court nor any such valuation report is produced before this Court. The Petitioners/Defendants have also not placed on record any comparable instances for the purpose of making out a case that the amount of interim compensation ascertained by the Appellate Court is, any manner, excessive. I am therefore, not inclined to interfere even in the quantum of interim compensation so fixed.

7. However the order passed by the Appellate Court however requires two modifications/clarifications:

Firstly; the interim compensation ascertained by the Appellate Court shall not be paid to the Plaintiffs but shall be deposited in the Court.

Secondly, the interim compensation of Rs.50,000/- per month shall be deposited by the Petitioners/Defendants from the date of the decree i.e. 5 September 2022 till decision of the Appeal.

8. Except the above two clarifications, no interference is warranted in the order dated 21 October 2024 passed by the Appellate Court. Writ Petition is accordingly **rejected**.

9. Considering the facts and circumstances of the case, Petitioners/Defendants are granted time of one week to deposit the decretal amount of Rs.4,00,000/- and further period of four weeks for depositing the arrears of interim compensation from the date of the decree till 31 December 2024.

10. Only in the event the deposits are made by the Petitioners/Defendants as directed above, the execution of the eviction decree shall stand stayed during pendency of the Appeal.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

Digitally signed
by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.12.06
10:43:02 +0530